

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

JUANY BARRIENTOS
Plaintiff,

v.

**PALOMAR SPECIALTY
INSURANCE COMPANY**
Defendant.

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CIVIL ACTION NO. _____
JURY DEMANDED

**DEFENDANT PALOMAR SPECIALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Palomar Specialty Insurance Company, in Cause No. C-0469-17-G, pending in the 370th District Court of Hidalgo County, Texas, files this Notice of Removal from that court to the United States District Court for the Southern District of Texas, McAllen Division, on the basis of diversity of citizenship and respectfully shows:

I. FACTUAL BACKGROUND

1.1 On or about January 31, 2017, Plaintiff filed his Original Petition in the matter styled *Juany Barrientos v. Palomar Specialty Insurance Company*, in the 370th District Court of Hidalgo County, Texas, in which Plaintiff made a claim for damages to his home under a homeowner's insurance policy.

1.2 Plaintiff served Palomar with process and Plaintiff's Original Petition on February 7, 2017.

1.3 Plaintiff's Original Petition states "On or about MAY [sic] 19, 2016, a storm hit the HIGALGO [sic] County area, damaging Plaintiff's house and other property. Plaintiff subsequently filed a claim on her insurance policy." *See* Pl.'s Original Pet. at ¶ 9.

1.4 The Index of Matters Being Filed is attached as Exhibit A to this notice of removal. A copy of the Hidalgo County District Clerk's file for this case is also attached as Exhibit B and includes true and correct copies of all executed process, pleadings, and orders. The Designation of Counsel is attached as Exhibit C.

II. BASIS FOR REMOVAL

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332, 1441(a) and 1446.

A. Complete diversity exists between Plaintiff and Palomar.

2.2 At the time the lawsuit was filed, Plaintiff was a resident of the State of Texas. *See* Pl.'s Original Pet. at ¶ 2.

2.3 Defendant Palomar is incorporated as an Oregon-domiciled insurance company, and has its principal place of business in California. Accordingly, Palomar is not a citizen of Texas.

2.4 Because Plaintiff is a citizen of Texas and Palomar, a foreign defendant, is the only defendant in this action, there is complete diversity between the parties. As such, removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

B. The amount of damages prayed for by Plaintiff exceeds the amount in controversy required to confer diversity jurisdiction on this Court.

2.5 Federal courts have subject matter jurisdiction over actions between citizens of different states in which the amount in controversy exceeds \$75,000. 28 U.S.C.

§1332(a)(1); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Generally, an amount in controversy for the purposes of establishing federal jurisdiction is determined by the Plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995).

2.6 In her Petition, Plaintiff expressly states that she is "seeking monetary relief of \$100,000 or less." *See* Pl.'s Original Pet. at ¶ 1.

2.7 Because Plaintiff has prayed for damages in excess of \$75,000, this case may be properly removed to federal court.

III. THE REMOVAL IS PROCEDURALLY CORRECT

3.1 Defendant Palomar was first served with Plaintiff's Original Petition and process on February 7, 2017. By filing its Notice on this day, March 8, 2017, Defendant Palomar files its Notice of Removal within the thirty-day time period required by 28 U.S.C. §1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(d), promptly after Palomar files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.4 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Hidalgo County District Court, promptly after Palomar files this Notice.

IV. CONCLUSION

4.1 Based on the foregoing, the exhibits submitted in support of this Notice, and other documents filed contemporaneously with this Notice and fully incorporated herein, Defendant Palomar Specialty Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mikell A. West, certify that on March 8, 2017, a copy of Defendant Palomar Specialty Insurance Company's Notice of Removal was *electronically filed* on the CM/ECF system, and will be served on the following attorney in charge for Plaintiff, Juany Barrientos:

VIA CM/RRR #7016 1970 0000 5545 7825

Marc K. Whyte
Whyte PLLC
1045 Cheever Blvd., Suite 103
San Antonio, Texas 78217

By: /s/ Mikell A. West
Mikell A. West